murders, maimings, burglaries, highway robberies, and the like which go unpunished. Judge Holt rightly insisted that the great amount of unpunished crime in this country has become a menace to our free institutions, and even to our civilization. Rightly, also, he called attention to the faults of our courts as in part responsible for this large amount of unpunished crime. He spoke especially of the inexcusable delays in the administration of justice, the admission of irrelevant testimony, the latitude allowed experts in criminal trials, and the multiplicity of indictments as things which should be corrected in our criminal courts.

Very properly, also, he admitted that punishment alone could never solve the problem of crime, that crime could only be gotten rid of by getting rid of the criminal. At this point, however, he made the mistake of suggesting that habitual criminals should be put to death. It is exceedingly regrettable that this one slip in Judge Holt's speech should have been magnified by the sensational press into the principal thing in his address. This, of course, was a grave injustice to Judge Holt; nevertheless, he should have known that penologists everywhere have come to the conclusion that the segregation of habitual criminals will answer all purposes of the death penalty, and avoid the many objections which may be rightly urged against the death penalty for every form of crime except that of murder. It must be admitted that the death penalty is of use in the solution of the problem of crime only in a relatively low moral state of society. It is at best a concession to the low moral status of the masses, for there is not much use in abolishing the death penalty for murder as long as the mass of the people show their thirst for blood by lynchings. The proposition, however, to reestablish the death penalty for offenses less heinous than murder is a backward step, unwarranted by either the state of society, or the nature of the problem of crime, and it is to be regretted that such a proposition was advocated in an otherwise excellent address.

C. A. E.

Judicial Disregard of Technicalities.

It is refreshing to observe the changing attitude of the courts toward technicalities in judicial procedure. The signs indicate that the widespread criticism to which some of them have been justly subjected for sacrificing justice to technicality and substance to form is beginning to produce results.

In the May number of the *Journal* we commented on a notable opinion of the Supreme Court of Oklahoma (*Caples v. State*, 104

Pac. 493, 1909) which refused to grant a new trial for the omission of a useless word in an indictment, and which at the same time took occasion to say that it purposed to give the people of the state a "just and harmonious system of criminal jurisprudence, founded on justice and supported by reason, freed from the mysticism of arbitrary technicalities." "This standard," the Court added, "will control our decisions, it matters not what or how many other appellate courts may have decided to the contrary." "Now that our criminal jurisprudence," it went on to say, "is in its formative period, we are determined to do all in our power to place it upon the broad and sure foundation of reason and justice so that the innocent may find it to be a refuge of defense and protection, and that the guilty may be convicted and taught that it is an exceedingly serious and dangerous thing to violate the laws of this state, whether they be rich and influential or poor and friendless. * * * * If we place our criminal jurisprudence upon a technical basis it will become the luxury of the rich who can always hire able and skillful lawyers to invoke technicalities in their behalf. We will give full consideration to all authorities which are supported by living principles, and will follow them when in harmony with our laws and the conditions existing in Oklahoma. But we must confess to a want of respect for precedents which were found in the rubbish of Noah's Ark, and which have outlived their usefulness, if they ever had any." All honor to the Supreme Court of Oklahoma for this enlightened and progressive stand, and we wish the words in which its opinion is thus announced could be burned into the mind of every appellate judge in the land. It is impossible for a layman to understand why this rule should not be the guiding principle of every judge who thinks more of substance than of form, and who desires to exalt justice above technicality.

We are glad to be able to call attention in this connection to a somewhat similar stand recently taken by the Court of Appeals of New York, whose code of criminal procedure declares that in capital cases the appellate court must give judgment without regard to technical errors or defects, or to exceptions which do not effect the substantial rights of the parties. In the case of the People v. Gilbert (109 N. Y. 10) the defendant had been convicted of murder, and his guilt was established beyond a doubt, but his counsel sought a reversal on the ground that the indictment neglected to state that the victim was a "human being"—an omission which it was contended was prejudicial to the rights of the accused. But such hair splitting

logic did not impress the Court of Appeals, and it made short work of the petition. In overruling the objection, Judge Vann took occasion to express his opinion of the place of technicalities in judicial procedure, and to say that the criminal law was fast outgrowing the subtle refinements which had been devised for the protection of innocent persons in an age when the severity of the criminal code was such as to shock the moral sense of all right minded men.

"Technical objections are no longer regarded as serious," said Judge Vann, "unless they are so thoroughly supported by authority that they cannot well be disregarded, even under the latitude of the statute relating to the subject. The criminal law is fast outgrowing those technicalities which grew up when the punishment for crime was so severe, as in many cases, to shock the moral sense of lawyers, judges and the public generally. When stealing a handkerchief worth one shilling was punished by death and there were nearly 200 different capital offenses, it was to the credit of humanity that technicalities should be invoked in order to prevent the cruelty of a strict and literal enforcement of the law. Those times have passed, for the criminal law is no longer harsh or inhumane, and it is fortunate for the safety of life and property that technicalities, to a great extent, have lost their hold."

Commenting on this decision the Springfield (Mass.) *Republican* observes that one can only marvel that so absurd a technicality as the above should ever have been able to get a hearing in any American court, much less a judgment of this statement and weight. To the shame of our technical-ridden system, however, there are many jurisdictions in which such technicalities are still respected and made use of to delay or defeat justice. We have called attention in previous numbers of this *Journal* to some of the more flagrant instances in which this has happened, and will doubtless have occasion to do so again in the future. The attitude of the New York Court of Appeals is thoroughly in accord with common sense and reason, and will meet the approval of all laymen as well as all members of the bar who have the proper sense of their obligations to society. If all courts would dispose of technicalities in this way much of the present widespread dissatisfaction with the administration of the criminal law would disappear. That an appellate court should render judgment upon the merits of the case without regard to technical errors which do not substantially prejudice the rights of the accused is as self-evident to a layman as the mathematical fact that five and five make ten. "What would you think of a Supreme Court," asks the

Philadelphia *Star*, "that set aside a ball game where the score was 99 to 1 and required it to be played over again simply because the umpire made a mistake in his decision that affected one run? It might be clear that the game had been won on the merits and that the umpire's decision had not affected the result, and yet because he made one error the game would have to be played all over again."

And yet, as the *Star* adds, the Supreme Courts of many of our states are proceeding along analogous lines in reviewing the decisions of trial courts. It is a source of gratification and evidence of a coming reaction that the highest courts of Oklahoma, Wisconsin, New York, and other states have set themselves against the old view which often sacrificed justice to technicality, and have announced their determination to administer justice on the basis of reason and common sense. J. W. G.

Judicial Support of Technicalities.

The attitude of the New York Court of Appeals in the case referred to above is in refreshing contrast with that taken by the Supreme Court of Alabama in the recent case of the state against West, where a conviction for stealing hides was set aside because the indictment failed to state whether the aforesaid articles were mule, goat, cow, or sheep hides. The constitution of Alabama declares that in all criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation, and in the judgment of the learned tribunal which was called upon to review the record of the trial court in this case, the thief, whose guilt had been established beyond all doubt and who had been sentenced to the penitentiary for a term of six years, had a constitutional right to more specific information concerning the kind of skins stolen in order that he might the better prepare to meet the charge against him. To an intelligent lay mind this is the veriest quibbling; it is simply trifling with justice, and it is such farcical performances as this that are doing so much to heap ridicule upon the legal profession and to bring our methods of judicial procedure into disrepute. Nevertheless, a writer in the Chicago *Legal News* undertakes to defend the Alabama Supreme Court from the charge of sacrificing justice to technicality. Indeed, he boldly asserts that this is not a *technicality* but a *fundamental principle* of the constitution and the law. "Now it must be apparent," he says, "that the mere charge of stealing some hides, without more, is simply equivalent to saying that West was guilty of stealing. It would obviously be as impossible for West